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**IN THE
COURT OF APPEALS OF INDIANA**

IN RE THE PATERNITY OF:)
A.J.C., A MINOR,)
)
ROBERT CRAWLEY,)
Appellant-Respondent,)
)
vs.)
)
ANDREA MOORE,)
Appellee-Petitioner.)

No. 49A05-0707-JV-373

APPEAL FROM THE MARION CIRCUIT COURT
The Honorable Carol Terzo, Master Commissioner
The Honorable Theodore M. Sosin, Judge
Cause No. 49C01-0608-JP-33562

December 4, 2007

MEMORANDUM DECISION – NOT FOR PUBLICATION

BRADFORD, Judge

Appellant-Respondent Robert Crawley appeals from the trial court's order denying his motion to set aside the paternity affidavit filed in response to Appellee-Petitioner Andrea Moore's petition to establish paternity to provide support pursuant to the execution of the paternity affidavit. After reviewing the record, we conclude that this matter is not yet ripe for appeal and that we lack subject matter jurisdiction over this appeal because the trial court has yet to issue a final judgment. This matter is therefore dismissed.

FACTS AND PROCEDURAL HISTORY

Crawley and Moore met in April or May of 1999. At the time they met, Moore was pregnant with A.J.C. Crawley accompanied Moore to the hospital when A.J.C. was born on November 29, 1999. At the time A.J.C. was born, Crawley and Moore were living together. On December 1, 1999, just days after A.J.C.'s birth, Crawley and Moore signed a paternity affidavit attesting that Crawley was A.J.C.'s biological father. After A.J.C.'s birth, Crawley and Moore separated, and their contact with one another became sporadic.

On August 15, 2006, Moore filed a petition seeking to establish paternity and to provide support pursuant to the executed paternity affidavit. Crawley filed a motion to set aside the paternity affidavit on December 21, 2006, claiming that he had not willingly signed the paternity affidavit, but, rather, that he had signed it under duress.

On March 15, 2007, the trial court held a hearing on Crawley's motion to set aside the paternity affidavit. At this hearing, both parties admitted that Crawley is not A.J.C.'s biological father, and the trial court accepted these admissions and stated that "I think we

all agree he's not the biological father." Tr. p. 26. Despite the statements by the parties establishing that Crawley is not A.J.C.'s biological father, the trial court denied Crawley's motion to set aside the paternity affidavit. This appeal follows.

DISCUSSION AND DECISION

Crawley claims that the trial court erred in denying his motion to set aside the paternity affidavit. However, we cannot properly consider this claim because the trial court has not yet entered a final judgment. Succinctly stated, a final judgment "'disposes of all issues as to all parties thereby ending the particular case.'" *Georgos v. Jackson*, 790 N.E.2d 451, 451 (Ind. 2003) (quoting *Doperalski v. City of Mich. City*, 619 N.E.2d 584, 585 (Ind. Ct. App. 1993)). It leaves nothing for future determination. *Id.* This doctrine is now formalized in Indiana Rule of Appellate Procedure 2(H), which provides that:

A judgment is a final judgment if:

- (1) it disposes of all claims as to all parties;
- (2) the trial court in writing expressly determines under Trial Rule 54(B) or Trial Rule 56(C) that there is no just reason for delay and in writing expressly directs the entry of judgment (i) under Trial Rule 54(B) as to fewer than all the claims or parties, or (ii) under Trial Rule 56(C) as to fewer than all the issues, claims, or parties;
- (3) it is deemed final under Trial Rule 60(C);
- (4) it is a ruling on either a mandatory or permissive Motion to Correct Error which was timely filed under Trial Rule 59 or Criminal Rule 16; or
- (5) it is otherwise deemed final by law.

Ind. Appellate Rule 2(H). The trial court did not enter a final judgment disposing of all claims between the parties, but, rather, merely denied Crawley's motion to set aside the paternity affidavit he signed on December 1, 1999.

In the instant matter, both parties treated the trial court's order denying Crawley's request to set aside the signed paternity affidavit as a final order. Neither party questioned whether this court could properly exercise jurisdiction over this matter. The question of whether the order was a final judgment governs this court's subject matter jurisdiction, and unlike most contentions, lack of subject matter jurisdiction may not be waived by the parties. *See Georgos*, 790 N.E.2d at 451. Neither the parties nor the trial court can confer appellate jurisdiction over an order that is not appealable either as a final judgment or under Indiana Trial Rule 54(B). *Id.* Lack of jurisdiction can be raised at any time, and if the parties do not question subject matter jurisdiction, this court may consider the issue *sua sponte*. *See id.* (citing *Albright v. Pyle*, 637 N.E.2d 1360, 1363 (Ind. Ct. App. 1994)).

The trial court's denial of Crawley's motion to set aside the paternity affidavit was not a final judgment because it did not dispose of all claims presented in the case. A disposition of all claims requires more than the entry of a ruling on a motion without entry of judgment. *Id.* at 452. This case was initiated by a petition filed on Moore's behalf seeking child support pursuant to the execution of the paternity affidavit signed by Crawley. There is no indication in the record that the trial court ever issued a ruling pertaining to Crawley's potential liability for child support, and neither party asserts that any such order has ever been issued. The trial court's order denying Crawley's request to set aside the paternity affidavit did not dispose of this matter, as the question relating to whether Moore is entitled to support payments from Crawley has yet to be broached by the trial court.

Likewise, the trial court's denial of Crawley's motion to set aside the paternity affidavit was not a final order under Indiana Trial Rule 54. An order is appealable as a final order under Trial Rule 54(B) if the trial court certifies an order, disposing of less than the entire case. *See* Ind. Trial Rule 54(B). An order becomes final and appealable under Trial Rule 54(B) "only by meeting the requirements of Trial Rule 54(B). These requirements are that the trial court, in writing, expressly determine that there is no just reason for delay, and, in writing, expressly direct entry of judgment." *Georgos*, 790 N.E.2d at 452 (citations omitted). The trial court made no Trial Rule 54 finding here, and as a result, its order denying Crawley's motion to set aside the paternity affidavit was not a final order under Trial Rule 54.

Since we have determined that the question as to whether Crawley is liable for support payments has not yet been disposed of by the trial court and that the trial court's order was not properly certified as a final order pursuant to Trial Rule 54, we conclude that the trial court's order denying Crawley's motion to set aside the paternity affidavit was not a final order and therefore, pursuant to Indiana Appellate Rule 5(A), we lack subject matter jurisdiction and may not properly consider this appeal at this time.

This matter is dismissed.

BAKER, C.J., and DARDEN, J., concur.